

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 CILIAS MCKINLEY,

4 Plaintiff,

5 v.

11 Civ. 7338 (DLC)

6 HECTOR MARTE, et al.,

Conference

7 Defendants.  
8 -----x

9 New York, N.Y.  
10 February 16, 2012  
10:00 a.m.

11 Before:

12 HON. DENISE COTE

13 District Judge  
14

15 APPEARANCES

17 MICHAEL A. CARDOZO

Corporation Counsel for the City of New York

18 Attorney for Defendants

19 MAX O. McCANN

MELANIE SPEIGHT

**Assistant Corporation Counsel**  
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1 (Case called)

2 MR. McCANN: Good morning, your Honor. Max McCann of  
3 the New York City Law Department. Along with me is Melanie  
4 Speight, Assistant Corporation Counsel. Ms. Speight is not  
5 admitted for the Southern District, but with your Honor's  
6 permission she would like to participate in the conference  
7 today.

8 THE COURT: Yes. Thank you.

9 Is anyone here on behalf of Mr. McKinley? No one has  
10 responded to that effect. Thank you. Why don't you be seated,  
11 counsel, and let me put some matters on the record.

12 This is our initial conference in this case. I sent  
13 out a scheduling order for this conference on January 5th,  
14 setting today, February 16th, as the date for the initial  
15 conference. We do not know whether the plaintiff has received  
16 notice of this conference. We expect he has not. We recently  
17 received as return mail, which was undelivered, the order  
18 issued on January 4th, which affected the time to answer for  
19 defendant Campbell and extended his time to answer to February  
20 2nd.

21 My chambers spoke with defense counsel yesterday when  
22 we received this piece of mail back and learned that the  
23 plaintiff has been transferred. We now understand what may be  
24 a current mailing address for the plaintiff. We will advise  
25 the clerk of court of that change of mailing address and thank

1 the city for its assistance in getting us that information. It  
2 is of course the plaintiff's obligation to keep the clerk of  
3 court informed as to any change in mailing address or  
4 residence.

5 I'm going to ask the defendants to order a copy of the  
6 transcript of today's conference and to provide a copy of that  
7 to the plaintiff. Will you do that, Ms. Speight?

8 MS. SPEIGHT: Yes, your Honor.

9 THE COURT: Thank you.

10 I want to advise the plaintiff through this transcript  
11 again of his duty to provide the clerk of court with current  
12 contact information and of course to provide that also to  
13 defense counsel. At some point if he fails to do so, he risks  
14 this case being dismissed for failure to prosecute.

15 That preliminary statement having been made, I'll ask  
16 you, Ms. Speight, to describe what you understand the core of  
17 the plaintiff's complaint to be.

18 MS. SPEIGHT: Your Honor, defendant's position is the  
19 plaintiff is bringing an excessive force claim against six  
20 members of the New York City Department of Correction. He  
21 alleges that on August 24th of 2011 he was involved in an  
22 altercation with four officers -- Correction Officer Hall,  
23 Correction Officer Wouyeah, Captain Marte, and Correction  
24 Officer Urena -- in which the officers used excessive force by  
25 means of punches and kicks towards the plaintiff.

1 He also alleges that he went to a hearing pertaining  
2 to this alleged assault on August 31, 2011, and that at that  
3 hearing he was assaulted by additional members of the New York  
4 City Department of Correction, including several parties who  
5 are not named specifically and are not parties to this action,  
6 as well as defendants Atkinson, the John Doe defendant who has  
7 been identified as Officer Campbell, and that's it, on the  
8 31st.

9 THE COURT: Have you been in communication with the  
10 plaintiff?

11 MS. SPEIGHT: We have not, your Honor. We sent the  
12 plaintiff correspondence to the address on the docket sheet.  
13 When we learned of the plaintiff's likely transfer to a state  
14 facility, we began mailing correspondence to both the address  
15 on the docket sheet and the upstate facility. We have not yet  
16 received any return mail from either address.

17 THE COURT: Thank you. The plaintiff has made no  
18 request for further assistance to identify the John Does  
19 associated with the August 31 alleged assault?

20 MS. SPEIGHT: To our knowledge, he has not, your  
21 Honor.

22 THE COURT: As part of the automatic disclosure that  
23 will now be made to him, will those officers' names be clear on  
24 the documents that are produced?

25 MS. SPEIGHT: It is unclear at this time, your Honor.

1 There is an issue with the materials because all DOC force  
2 instances require a use of force allegation packet, or a use of  
3 force packet, if it is substantiated, is created. In this  
4 instance, since the events are recent, we have been informed by  
5 the Department of Corrections that both investigations are  
6 still ongoing, so we actually have not been able to obtain the  
7 paperwork.

8 In fact, if it would be permissible to your Honor, we  
9 would like to request a 60-day stay of discovery, including our  
10 time to respond to the 33.2 request, so that hopefully the  
11 investigations will be concluded and we will be able to obtain  
12 that paperwork. Based on the State Department of Corrections  
13 website, that would also give time to the plaintiff to possibly  
14 be released, as his conditional release date is listed as April  
15 12th.

16 THE COURT: It will become even more important that  
17 the plaintiff keep the defendants and the clerk of court  
18 advised of a mailing address and contact information if he is  
19 released on April 12th or whenever he is released if he wishes  
20 to pursue this lawsuit.

21 I will grant your request. It sounds like it would be  
22 impossible to proceed with discovery in this case until the  
23 documents can be obtained that are critical to the plaintiff's  
24 allegations.

25 I'm going to set a schedule that requires a status

1 letter from the defendants by April 27th. In that letter I am  
2 hoping to learn whether the investigation has been completed  
3 such that the paperwork associated with an allegation by a  
4 plaintiff that there has been an excessive use of force is now  
5 available to Corp. Counsel and can be produced to the  
6 plaintiff.

7 Of course, if you have already produced that  
8 paperwork, you can advise me of that fact. If the paperwork is  
9 not yet available, I'd like a report in that letter as to when  
10 the investigation is likely to be concluded and the paperwork  
11 made available.

12 Using April 27th as a working date, I'm going to  
13 assume that the material has been produced to the plaintiff by  
14 that time, and that if he wishes to amend his pleading to add  
15 additional officers, that must happen by June 1. If there is  
16 an amended complaint filed by June 1, I'll be issuing an order  
17 requesting again that the Department of Corrections cooperate  
18 with respect to service.

19 I'm going to assume, though, that meanwhile document  
20 discovery is proceeding, and if the plaintiff wishes any  
21 further documents than he has already received from the  
22 defendants, that he has requested those in writing. We will  
23 provide the summer for an opportunity for the parties to take  
24 any depositions if this litigation is proceeding and close fact  
25 discovery September 14th.

1           It doesn't sound like there will be expert discovery  
2 here. There may be serious injuries in which expert discovery  
3 would be appropriate, I do not know. If the plaintiff wishes  
4 an opportunity to provide expert testimony, he can write before  
5 September 14th, and I'll revise the schedules to permit a  
6 period for expert discovery as well.

7           I'm going to set a schedule for summary judgment  
8 practice. Any summary judgment motion should be filed by  
9 October 12th, with opposition due November 16th and reply due  
10 December 7th. If there is no summary judgment motion, then the  
11 plaintiff's statement of what he intends to prove at trial will  
12 be due on October 26th and I'll set a schedule that will set  
13 dates to follow for the defendants' submission.

14           I'm not going to refer this case right now to a  
15 magistrate judge for settlement discussions. I don't know  
16 right now who our magistrate judge assigned to this case is.  
17 But if this case proceeds, if the plaintiff is in communication  
18 with the Court and defense counsel and discovery proceeds, I  
19 will be referring it at some point to the magistrate judge for  
20 settlement discussions.

21           I believe the magistrate judge is Judge Maas. Now  
22 that I have his name, assuming all goes as scheduled here, I'll  
23 require defense counsel to coordinate with the plaintiff but to  
24 call Magistrate Judge Maas no later than July 13 to arrange for  
25 settlement discussions under his supervision.

1 Ms. Speight, is there anything else that we need to  
2 do?

3 MR. McCANN: If I may, your Honor, in the interests of  
4 determining if the plaintiff is interested in pursuing this  
5 litigation, we ask perhaps that the Court set a date certain by  
6 which he is to update the docket sheet with his current  
7 address, perhaps two weeks.

8 THE COURT: You believe you have his current contact  
9 information?

10 MR. McCANN: That's correct, your Honor.

11 THE COURT: I'm going to assume that it will take  
12 roughly two weeks for a transcript to be created and two  
13 further weeks for it to be provided to the plaintiff. I'm  
14 being a little generous in these dates here just so we give the  
15 plaintiff enough time. The plaintiff must provide the clerk of  
16 court and the defendant by April 13th with his current contact  
17 information or the case will be dismissed for failure to  
18 prosecute.

19 MR. McCANN: Nothing further from defendants.

20 THE COURT: Let me address one issue. If the  
21 plaintiff does choose to pursue this lawsuit and participate in  
22 discovery and if there are disputes between the plaintiff and  
23 defendants regarding discovery, I'm advising all the parties,  
24 the plaintiff and defense counsel, that they must be  
25 cooperative in discussing those disputes with each other and



1 try to resolve them in good faith. If after those  
2 conversations or exchange of letters between each other they  
3 still have a dispute that remains, they can send me a letter no  
4 longer than two pages and I'll arrange to address the dispute.

5 Thank you.

6 (Adjourned)